

1

2 **PETER H. LIEDERMAN SB NO. 201103**

3 **2444 Russell St.**

4 **Berkeley CA 94705-2038**

5 **Voice: 510-681-6916**

6 **Facsimile: 510-540-6390**

7 *berkeleylawfirm@gmail.com*

8 Attorney for Kenneth G. Renz, Defendant
9 and Estate of Jackson R. Dennison

10

11 UNITED STATES DISTRICT COURT

12

13 NORTHERN DISTRICT OF CALIFORNIA

14

15 SAN FRANCISCO

16

17 WELLS FARGO BANK, N.A., as TRUSTEE
18 for the CLARA POPPIC TRUST

19 Case No.: No. CV 08- 2561 EMC
20 Hon. Edward M. Chen

21

22 Plaintiff,

23 Complaint filed: May 21, 2008
24 Trial Date: Not Set

25

26 KENNETH G. RENZ; ESTATE OF JACKSON
27 R. DENNISON; ESTATE OF WILEY
28 UMSTEAD; KAZUKO UMSTEAD; WON
29 JAE YI aka MICHAEL YI; NAN Y. PARK;
30 GUAN HUANG; YING ZHANG and SUI
31 SONG,

32 NOTICE OF MOTION AND MOTION
33 TO DISMISS, Fed R. Civ. P. 12(b)(1)

34

35 Defendant

36 Hearing Date: August 20, 10:30
37 Hearing Time: 10:30
38 Hearing Dept: C

39

40

41 TO ALL ATTORNEYS OF RECORD AND DEFENDANTS IN PROPRIA PERSONA,

42 NOTICE IS HEARBY GIVEN that on August 20, 2008, in Department C, located on the 15th

43 Floor of 450 Golden Gate Avenue in San Francisco at 10:30 AM or as soon thereafter as the

44 matter may be heard, Defendant KENNETH G. RENZ, and Defendant Estate of Jackson R.

45 Dennison will and does move as follows:

46

47

1. To dismiss the action on the ground that the court lacks jurisdiction because Plaintiff, a private citizen, has not complied with notice requirements for a complaint under 42 U.S.C § 9607, as required by 42 U.S.C. § 6972(a), and 42 U.S.C. § 9659 (a) (1), and because no other basis for Federal jurisdiction exists.
 2. In the event that any portion of this case is not dismissed, defendant requests leave to assert defenses, counter, and cross claims.

As the attached Memorandum of Points and Authorities more fully explains, the law is well-established that failure to provide sufficient notice in a citizen suit under Title 42 provisions requires dismissal. Requiring citizens to comply with the notice and delay requirements furthers Congress' goal of striking a balance between encouraging citizen suits and avoiding burdening the federal courts with excessive numbers of such suits, since notice allows government agencies and alleged violators to achieve compliance without the need for suit. *Hallstrom v. Tillamook County* 493 U.S. 20 (1989), p 21 110 S.Ct. 304, 107 L.Ed.2d 237, 58 USLW 4007. The RCRA provisions discussed in *Hallstrom* are reiterated in CERCLA, and applied to 42 U.S.C. § 9607 lawsuits by 42 U.S.C. § 9659 which governs citizen suits arising under the chapter in which § 9607 falls.

The question of injuries to Plaintiff's real property, or under Calif. Health and Safety Code §§ 25300, 25395 in Plaintiff's Second and subsequent causes of action, present only questions of state law. Pursuant to 28 U.S.C. § 1337(c)(3) "The district courts may decline to exercise supplemental jurisdiction over a [state-law] claim . . . if . . . the district court has dismissed all claims over which it has original jurisdiction."; *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n. 7, 108 S.Ct. 614, 98 L.Ed.2d 720 (1988). See also *Hallstrom v. Tillamook County* 493 U.S. 20 (1989).

This motion is based on the accompanying Memorandum of Points and Authorities and papers on file in this action, this motion, the incorporated Notice of Motion, the accompanying memorandum of

1 points and authorities, the affidavit of Defendant Renz and the judicially noticeable Notice given by
2 Plaintiff, and whatever evidence and argument is presented at the hearing of this motion.

3

4

5

6 Dated: July 10, 2008

7 LAW OFFICE OF PETER H. LIEDERMAN

8

9

10 BY __/s/ _____
Peter H. Liederman,
Attorney for Kenneth G. Renz, Defendant and
Estate of Jackson R. Dennison, Defendant.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25